

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6927 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHAVESH @ NARESH HARGOVINDBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR HRIDAY BUCH for Petitioner

Mr. D.P.Joshi, A.P.P.for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 04/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Hriday Buch for the
petitioner and learned A.G.P. Mr. D.P. Joshi for the
respondents nos.1, 2 and 3.

The detention order dated 19-1-1999 passed by the
respondent no.1-District Magistrate, Bhavnagar, against
the petitioner in exercise of powers conferred under

Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "A" indicate that three criminal cases have been registered against the petitioner, out of which two criminal cases vide CR no.159/97 dated 31-8-1997 and CR no.109/98 dt. 15-6-1998 have been registered at "C" Division Police Station, Bhavnagar for the offences made punishable under Secs.324, 504 read with Sec.114, IPC and also under Sec.135 of the Bombay Police Act while the other case vide CR no.155/98 dated 4-8-1999 has been registered at "C" Division Police Station, Bhavnagar for the offences made punishable under Secs.457 and 380, IPC. All the three cases are pending trial in Court.

The grounds further indicate that three witnesses on assurance of their anonymity have given information vide their statement dated 26-12-1998 in respect to antisocial activity of the petitioner.

3. That in consideration of the said material, the respondent no.1-District Magistrate, Bhavnagar has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the impugned order is rendered invalid on account of delayed action taken by the authority. It is pointed out that out of three registered cases, the last registered case is dated 4-8-1998. The statement of anonymous witnesses are also recorded only after the petitioner is released on bail and the impugned action of passing the detention order is taken on 19-1-1999 without any reasonable explanation for causing such delay. That in support of the submission, reliance has been placed on the observations made by the Supreme Court in the matter of PRADIP NILKANTH PATURKAR VS. S. RAMAMURTI & ORS. (AIR 1994 SC 656).

5. On scrutiny of papers, it appears that the grounds of detention is devoid of any reasonable explanation as to why action is taken after about a delay of four months from the date of registered offence. That despite service of rule, no affidavit appears to have

been filed on behalf of either of the respondents. In view of the said fact, it clearly appears from the grounds of detention that live link between the alleged criminal activity of the petitioner and the date of action taken was snapped by passage of time and as such, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

6. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

7. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 19-1-1999 passed by the respondent no.1-District Magistrate, Bhavnagar, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Bhavesh alias Naresh Hargovind Bhambhanja is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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